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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PINNACLE FITNESS AND
RECREATION MANAGEMENT,
LLC, a Delaware limited liability
company,
Plaintiff,

v.

THE JERRY AND VICKIE MOYES
FAMILY TRUST, an Arizona trust,
Defendant.

AND RELATED COUNTERCLAIMS.

Case No. 08-cv-1368-GPC-BGS

**AMENDED JUDGMENT
FOLLOWING CIVIL JURY TRIAL**

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1 This matter, having come before the Court (i) for a jury trial from January 14,
 2 2013 through January 30, 2013, and the jury having rendered verdicts set forth in
 3 Special Verdict (Docket No. 284) and Special Verdict #2 (Docket No. 285) on
 4 January 30, 2013; (ii) on The Jerry and Vickie Moyes Family Trust's Renewed
 5 Motion for Judgment as a Matter of Law or, Alternatively, a New Trial; and (iii) on
 6 Pinnacle's Motion to Correct the Judgment, IT IS HEREBY ORDERED,
 7 ADJUDGED, and DECREED:

8 **THE PARTIES**

9 1. Plaintiff/Counter-Defendant Pinnacle Fitness and Recreation
 10 Management, LLC ("Pinnacle") is a Delaware limited liability company with its
 11 principal place of business in Wheeling, Illinois.

12 2. Defendant/Counter-Plaintiff The Jerry and Vickie Moyes Family Trust
 13 (the "Trust") is a trust organized under the State of Arizona whose trustees are Jerry
 14 Moyes and Vickie Moyes.

15 **PINNACLE'S CLAIMS**

16 ***Counts II, III, IV***

17 3. Judgment is entered on Counts II, III, and IV of the First Amended
 18 Complaint as follows:

- 19 a. Count II: Judgment is entered in favor of Pinnacle and against the
 20 Trust on Pinnacle's claim for breach of contract.
- 21 b. Count III: Judgment is entered in favor of Pinnacle and against the
 22 Trust on Pinnacle's claim for breach of the covenant of good faith
 23 and fair dealing implied in the contract alleged in Count II; and
- 24 c. Count IV: Judgment is entered in favor of the Trust and against
 25 Pinnacle on Pinnacle's claim for promissory estoppel.

26 4. Judgment is entered on Counts II and III in favor of Pinnacle and
 27 against the Trust in the amount of \$1,632,495.72.

1 ***Counts VI and VII***

2 5. Judgment is entered on Counts VI and VII of the First Amended
3 Complaint as follows:

4 a. Count VI: Judgment is entered in favor of Pinnacle and against the
5 Trust on Pinnacle's claim for breach of contract arising out of the
6 MFC Operating Agreement; and

7 b. Count VII: Judgment is entered in favor of Pinnacle and against the
8 Trust on Pinnacle's claim for breach of the covenant of good faith
9 and fair dealing implied in the MFC Operating Agreement.

10 6. Judgment is entered in the amount of \$0.00.

11 ***Counts VIII, IX, X, and XI***

12 7. Judgment is entered as follows on Counts VIII, IX, X, and XI of the
13 First Amended Complaint:

14 a. Count VIII: Judgment is entered in favor of Pinnacle and against the
15 Trust on Pinnacle's claim for breach of fiduciary duty;

16 b. Count IX: Judgment is entered in favor of Pinnacle and against the
17 Trust on Pinnacle's claim for fraud;

18 c. Count X: Judgment is entered in favor of Pinnacle and against the
19 Trust on Pinnacle's claim for constructive fraud; and

20 d. Count XI: Judgment is entered in favor of Pinnacle and against the
21 Trust on Pinnacle's claim for conspiracy.

22 8. Judgment is entered on Counts VIII, IX, X, and XI in favor of Pinnacle
23 and against the Trust in the amount of \$905,242.00 in compensatory damages.

24 9. Judgment is entered on Counts VIII, IX, X, and XI in favor of Pinnacle
25 and against the Trust in the amount of \$1,100,000.00 in punitive damages.

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1 ***Counts I and V***

2 10. Counts I (Declaratory Judgment) and V (Unjust Enrichment) of the
3 First Amended Complaint are dismissed with prejudice by stipulation of the parties.

4 **INTEREST**

5 11. The Trust shall pay pre-judgment interest on the compensatory
6 damages awarded on Counts II and III (\$1,632,495.72), pursuant to NRS §99.040, at
7 the rate specified in the Trust's agreement to buy Pinnacle's membership interest in
8 MFC, as set forth in Exhibit 3 to the First Amended Complaint, which is LIBOR 1-
9 year plus 2% as of January 1, 2008.

10 a. Pre-judgment interest on the installment payments totaling
11 \$1,228,418.72 shall accrue as follows:

12 i. Pre-judgment interest on the first installment of \$307,104.67
13 shall begin to accrue on July 1, 2008.

14 ii. Pre-judgment interest on the second installment of \$307,104.67
15 shall begin to accrue six months after July 1, 2008, or January 1,
16 2009.

17 iii. Pre-judgment interest on the third installment of \$307,104.67
18 shall begin to accrue six months after January 1, 2009, or July 1,
19 2009.

20 iv. Pre-judgment interest on the fourth installment of \$307,104.67
21 shall begin to accrue six months after July 1, 2009, or January 1,
22 2010.

23 b. The rate must be adjusted on each January 1 and July 1 from these
24 respective accrual dates through the date of this judgment.

25 12. The Trust shall pay pre-judgment interest on the compensatory
26 damages awarded on Counts VIII, IX, X, and XI (\$905,242.00), pursuant to NRS
27 §17.130, at a rate equal to the prime rate at the largest bank in Nevada as ascertained
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1 by the Commissioner of Financial Institutions on July 1, 2008 plus 2 percent. Pre-
 2 judgment interest shall accrue from August 4, 2008, the date on which the Trust was
 3 served with the summons and complaint, through the date on which this judgment is
 4 entered. The rate must be adjusted on each January 1 and July 1 from August 4,
 5 2008 through the date on which this judgment is entered.

6 13. The Trust shall pay post-judgment interest on the total judgment of
 7 \$3,637,737.72, pursuant to 28 U.S.C. §1961(a), at the rate of the weekly average 1-
 8 year constant maturity Treasury Yield as published by the Board of Governors of
 9 the Federal Reserve System, for the week preceding the date of this judgment. Post-
 10 judgment interest shall accrue on this judgment from the date on which the
 11 judgment is entered until the judgment is satisfied.

12 **THE TRUST'S COUNTERCLAIMS**

13 ***Breach of Contract, Count I***

14 14. Judgment is entered in favor of Pinnacle and against the Trust on Count
 15 I (breach of contract) of the Trust's Counterclaim.


16 ***Breach of Implied Duty of Good Faith and Fair Dealing, Count II***

17 15. Judgment is entered in favor of Pinnacle and against the Trust on Count
 18 II (breach of implied duty of good faith and fair dealing) of the Trust's
 19 counterclaim.

20 **FINAL JUDGMENT**

21 16. This is a final judgment for appellate purposes.

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 23 DATED: May 15, 2013

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 25 HON. GONZALO P. CURIEL
 26 United States District Judge
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